

United States Courts
Southern District of Texas
FILED

DEC 29 2014

David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

DIVISION

Barry W. Le Blanc,
Plaintiff,

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CIVIL ACTION NO.

vs.

City of Rosenberg,
Defendant.

JURY DEMAND

PLAINTIFF'S ORIGINAL COMPLAINT

Barry W. Le Blanc, Plaintiff, alleges as follows:

JURISDICTION AND VENUE

1. This case is brought pursuant to the Age Discrimination in Employment Act and Texas law (TEX. LAB. CODE § 21.051). This Court has jurisdiction over this civil action pursuant to 29 U.S.C. § 626(c)(1) and 28 U.S.C. § 1331, including supplemental jurisdiction over the Plaintiff's claim under state law pursuant 28 U.S.C. § 1367.

2. Venue in this judicial district is proper as it is the place where the actions complained of occurred.

PARTIES

3. The Plaintiff, Barry W. Le Blanc, is an adult resident of the United States of America.

4. The Defendant, City of Rosenberg, is a municipal corporation with capacity to be sued.

STATEMENT OF FACTS

5. Mr. Le Blanc is 53 years old, having been born on July 14, 1961. He was hired by the City of Rosenberg in May of 1993 as a Fireman, classified as Firefighter I. He currently holds

the position of Ride-up Driver/Operator and is the oldest regular firefighter with the City of Rosenberg.

6. In September of 2012, Mr. Le Blanc filed a written complaint against Battalion Chief Loesch for inappropriate and hostile behavior towards him. Mr. Le Blanc has been subjected to Loesch's threatening and hostile behavior prior to the very public incident on September 4, 2012 which prompted the complaint, and after that incident. Mr. Le Blanc was told Loesch received a verbal warning. Battalion Chief Loesch's hostile behavior towards Mr. Le Blanc has continued.

7. In August of 2013, the City of Rosenberg announced the opening of seven (7) Driver/Operator positions and advertised for applicants. Mr. Le Blanc was one of eight (8) qualified applicants tested for the seven (7) open positions, and the only one over the age of 40.

8. Work Assignments for each shift are made by the Battalion Chief. These assignments can give practical training for the testing process. Battalion Chief Loesch denied Mr. LeBlanc the assignments that would have been beneficial to his preparation for testing, yet these assignments were given to the younger applicants. Fire Chief Goats, having been made aware of Loesch's hostile behavior towards Le Blanc in both written and verbal complaints also witnessed Loesch's failure to grant Mr. Le Blanc the same opportunities for training as the other younger candidates, but did not address the situation.

9. In addition to denying Mr. Le Blanc opportunities to train, Battalion Chief Loesch trained Le Blanc to draft incorrectly by using the wrong drafting mode, leading to failure of this component during testing for the promotion.

10. Unlike previous testing and evaluation processes, the assessments were made in house instead of using outside fire professionals. Battalion Chief Loesch was one of the five evaluators, and the only evaluator that noted the scoring for the practical skills section of the test.

He did this by using a yellow tablet instead of a standardized score card. Mr. Le Blanc received the lowest score of the eight (8) candidates and was denied the promotion.

11. After the promotion was denied to Mr. Le Blanc, he was reassigned from the “A” shift to the “B” shift and lost his position of seniority which governs priority for “Kelly Days” off and vacation time.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

12. Mr. Le Blanc timely charged age discrimination in a charge filed with both the Texas Workforce Commission and the EEOC on July 14, 2014. The EEOC issued a notice of right to sue. The EEOC mailed the notice of right to sue on September 26, 2014. Mr. Le Blanc has filed this suit within 90 days of his receipt of the notice.

CLAIM: AGE DISCRIMINATION

13. The City of Rosenberg limited and deprived Mr. Le Blanc of employment opportunities and adversely affected his status as an employee on the basis of his age, in violation of 29 U.S.C. § 623(a) and TEX. LAB. CODE § 21.051.

DAMAGES

14. Mr. Le Blanc’s damages include lost wages and benefits as well as compensatory damages for the injuries suffered because of the Defendant’s illegal discrimination, including but not limited to mental anguish.

RELIEF REQUESTED

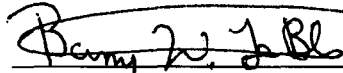
15. Mr. Le Blanc asks this court to enter a judgment:

- a. Declaring that the acts and practices complained of in this Complaint are in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 623(a), and TEX. LAB. CODE § 21.051.

- b. Enjoining and permanently restraining these violations of law;
- c. Directing the Defendant to pay the Plaintiff actual and compensatory damages that he suffered, past and future;
- d. Awarding Plaintiff equitable relief, including but not limited to reinstatement and/or front pay;
- e. Awarding Plaintiff pre-judgment interest on the amounts owed at the maximum rate allowed by law;
- f. Awarding Plaintiff the costs of this action, together with reasonable attorneys' fees and expert witness fees;
- g. Awarding Plaintiff post-judgment interest on the amount of judgment until paid at the maximum rate allowed by law; and
- h. Awarding Plaintiff such other relief, legal or equitable, as may be warranted.

Date: December 28, 2014

Respectfully submitted,



Barry Le Blanc
1208 Frances Drive
Rosenberg, Texas 77471
(713)206-7336
barrywl62@gmail.com